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From:

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To:

Cc:

Subject: RE: 1 remaining partner, still a partnership-level proceeding?

A TEFRA partnership proceeding is required to determine that a listed partner is not a partner in fact. Historic Boardwalk Hall LLC et al. v. Commissioner; 136 T.C. No. 1; No. 11273-07 (Jan. 3, 2011).

The determination of whether the TEFRA procedures apply is generally determined based on the partnership return as of the beginning of the partnership proceeding. See Samuelli v. Commissioner 2009 WL 1397177 (9th Cir. May 18, 2009) (whether small partnership exception applies) and I.R.C. 6231(g)(reliance on partnership return to determine if TEFRA procedures apply). See also I.R.C. 6233(b)(if a partnership return is filed the determination that no partnership exists is determined in TEFRA proceeding). The listing of a trust or disregarded entity as a partner automatically makes the TEFRA partnership procedures apply. Rev. Rul. 2004-88.

Thus, even if the trust partner is ultimately disregarded, the TEFRA procedures apply to your case.